

September 29, 2002

Summary of First Negotiation Session on New Water Supply Agreement

Date of Meeting: September 23, 2002
Place: Santa Rosa Laguna Pumping Plant
Time: 9:00 AM – 12:00 Noon
Parties Present and Represented:
Cities: Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Windsor
Districts: North Marin, Marin Municipal, Sonoma County Water Agency,
and Valley of the Moon
Absent: Forestville Water District
(See Attachment A for complete list of attendees).

Meeting Recap:

Miles Ferris, WAC Chairperson, opened meeting inviting public comment. None were offered. He then reviewed his kickoff Memo entitled ‘Water Contract Negotiations’ dated September 20, 2002 and suggested the group tackle water conservation issues as a place to start.

Chris Sliz, IBN (Interest Based Negotiation) Facilitator invited introductions from the Parties. Decisions reached by the Parties are enumerated below.

The question of who was to draft the agreement was raised by Joe Netter. Several parties said the original plan for the WAC consultant, John Olaf Nelson Water Resources Management (JONWRM) to prepare agreement drafts should be followed. Randy Poole said SCWA would retain control of drafting agreement. After discussion, and although no vote was taken, the apparent consensus was that issues would be discussed and decided upon by the Parties, language describing these decisions would be prepared by JONWRM and the SCWA would respond with legal terminology it could support for the WAC to review.

One Party then raised an issue it felt had not yet been listed/addressed in the Framework Issues List. Other Parties were asked to cite any additional issues they had. Issues raised are shown on Attachment B.

Chris Sliz then directed the Parties attention to Conservation Issues. John Nelson went over the water conservation issues the Parties had previously identified as a result of public workshops and input from the Parties (see Attachment C). Detailed discussion/debate then proceeded. Issues were synthesized and a “thumbs up” vote was taken on seven issues. The results are enumerated below. Issues on which consensus was achieved are shown in bold. It is important to bear in mind that these represent the consensus of the representatives of the Parties to the negotiation. Detailed legal language

and approval of the various city councils and boards of directors of the special districts lie down the road. Furthermore bear in mind that the SCWA representative, although providing input, choose not to vote on any issue, leaving it to the other Parties to the negotiation to first state their preference.

Since Forestville was absent, voting represents the consensus of nine Parties (Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Windsor, North Marin, Marin Municipal, and Valley of the Moon). Each of the nine had one vote to cast pursuant to the rule adopted by the WAC at its meeting of September 9, 2002, namely:

- Decision making style: Consensus (defined as all Parties agreeing they are either for an issue or can live with it)
- If Parties can't come to consensus, table the issue and deal with it at the end of the negotiation.

Vote results on each item are shown in parenthesis. The first number in the array represents "thumbs up" or yes, the second, thumbs horizontal or "don't prefer but can live with it", and the third thumbs down or "can't live with this". Items are arranged in descending order of consensus. Items in bold indicate a consensus decision was reached. Items preceded by an "R" means one or more Parties voted thumbs down but that they offered to bring the matter to their respective council/board for reconsideration to see if vote can be revised to a "can live with it". Items preceded with an "F" failed for lack of a consensus.

Voting Results:

- 1. Agreement to require Contractors to meet BMPs from time to time promulgated by CUWCC. (9/0/0)**
 - 2. Incorporate achievement of BMPs as requirement in agreement – each Contractor to determine cost-effective programs per CUWCC guidelines. WAC to levy charges against those not meeting requirements. (9/0/0)**
 - 3. BMPs to be focus of water conservation effort. Standing Committee of WAC to apportion funding for programs that go above and beyond BMPs. (6/3/0)**
- R1. SCWA to continue to collect funds for water conservation but to do so by levying a separate charge and creating a separate fund. (7/1/1)
- F1. Continue current method of funding and implementing Tier 1 Conservation. Restructure Tier 2 funding criteria recently developed by WAC to identify priorities (take into consideration imbalance of project cost and size of entitlement experienced by small Contractors such as Cotati). (5/3/1)
- F2. Contractors to individually fund the cost of achieving BMPs not covered by their share of the \$15 million dollar distribution made by the SCWA and raised by

surcharging the O&M rate. SCWA to levy a water conservation charge to go into a water conservation fund to help finance Contractor efforts that go beyond the BMPs. Standing Committee/WAC to determine use of funds. (5/2/2)

- F3. Regards local water conservation program spending beyond the initial \$15 million under contract, each Contractor commit to locally funding and annually spending an appropriate amount of dollars on water conservation programs to accomplish BMPs (and beyond). Each Contractor to determine their own priorities. Stop spending when run out of cost-effective programs. (3/1/5)

Attachment D sets forth JONWRM's recommended language to implement consensus reached.

Follow-up Tasks:

1. Session report with language implementing decisions, references to where covered in existing agreement, comments on Framework Issues addressed/not addressed. (John Nelson, circa September 29th).
2. Information on/recap of MMWD and Windsor Agreements (John Nelson, before October 28th)
3. Respond with Agency's proposed contract language pertaining to water conservation issues (Randy Poole, before October 28)
4. Mail copies of MMWD and Windsor contracts to contractors (Randy Poole, before October 28th)

Next Negotiation Session: 9:00 AM-12:00 PM, October 28, Laguna Treatment Plant

Order of Negotiation Decided on by Parties for the Next Session:

- Recap of prior session on Water Conservation Issues by JONWRM, response from Petaluma's representative on Item R1 plus any further follow-up discussion/decisions/changes on water conservation.
- Issue: Overarching Provision Regarding Planning and Consideration of Environmental Impacts (See Topic I on Framework Issues List)*
- Issue: Agreement Governance (See Topic VII on Framework Issues List)*

* Note: Framework Issues Topics I and VII are included here on Attachment E for your ready reference.

Attachment A

Session Attendees

City and Special District Attendees:

Jane Bender, City of Santa Rosa
Mike Martini, City of Santa Rosa
Miles Ferris, City of Santa Rosa
Virginia Porter, City of Santa Rosa
Chris DeGabriele, North Marin Water District
Syed Rizvi, North Marin Water District
Ron Theisen, Marin Municipal Water District
Mark Bramfitt, Valley of the Moon Water District
Lee Harry, Valley of the Moon Water District
Ron Prushko, Valley of the Moon Water District
Toni Bertolero, City of Cotati
Bill Stephens, City of Rohnert Park
Joe Netter, City of Rohnert Park
Joe Gaffney, City of Rohnert Park
Jake MacKenzie, City of Rohnert Park
Al Bandur, City of Sonoma
Mike Fuson, City of Sonoma
Matt Mullan, Town of Windsor
Mike Healy, City of Petaluma
Mike Ban, City of Petaluma
Steve Simmons, City of Petaluma
Randy Poole, Sonoma County Water Agency
John Nelson, Water Resources Management
Chris Sliz, City of Santa Rosa

Public Attendees: Bob Anderson, United Winegrowers

Attachment B

Additional Issues Raised by Parties

- a. Error needs to be corrected regarding erroneous annual cap set for Valley of the Moon (Harry).
- b. Impacts of including Windsor and Marin Municipal Water District need to be fully disclosed/explained – especially cost sharing and shortage allocation impacts (Bertolero, Netter, Bandur, Mullan).
- c. Contractors must not be penalized when shortage allocations are made for maintaining/developing local supply capability (Bertolero, Harry, Healy).
- d. During shortages, water conservation and potable reuse implemented must not count against Contractors (Netter, Theisen, Martini).
- e. How WAC voting should change with Windsor and Marin Municipal added needs to be addressed (Bandur).
- f. A Contractor who does not benefit from a particular capital investment should not be included in the repayment pool for same (Bandur).
- g. In allocating water, needs of Sonoma County should have priority over additional out of County needs (Bandur).
- h. Local supply, reuse and conservation investments should be the funding responsibility of each contractor rather than pass money through the SCWA (Healy).
- i. Any consideration of increasing an entitlement needs to address Russian River and Eel River Impacts (Healy).
- j. Demand hardening needs to be taken into account in allocating water during shortage (Martini, Theisen).
- k. Agreement modifications that may be necessary to implement needed agreement facilities must not be held hostage by unanimous vote. A process for dealing with such changes needs to be included in new agreement (Martini, DeGabriele).
- l. Referred Parties to 14 issues contained in original comment letter dated Feb. 6, 2002. Noted entitlements are fixed by EIR. (DeGabriele).
- m. How watershed issues are to be dealt with needs to be included (Theisen).
- n. Fair share cost issues and allotments regarding addition of Windsor and Marin Municipal need to be addressed. (Poole).
- o. Should Marin Municipal opt for develop a desalinization supply, 5,000 afa (in the Russian River) may become available for allocation to others (Poole).
- p. Funding for major replacements needs to be included (Poole).
- q. Issues regarding allocation of the benefits of loan and grants acquired for the system need to be addressed (Poole).
- r. Periodic bond sales via JPA needs to be addressed (Poole).
- s. Possibility of Forestville Water District dropping out as a New Agreement Contractor (Poole).
- t. Inclusion of funding for ESA/watershed expenses (Poole).
- u. Contractor independent obligations re. local watersheds (Poole).
- v. Issue of penalties if given Contractor takes water over entitlement (Poole).
- w. Reuse emphasis/standards need to be included (Poole).

Attachment C

Topic II from “Framework Issues to be Included in New Agreement Negotiation”
(Framework Issues List as revised by WAC on June 3, 2002, after considering changes recommend by the public at Workshop No. 4)

“II. Conservation

- B Make conservation a high priority and provide incentives for aggressive water conservation efforts which are tailored to local conditions and meet or go beyond the BMPs.
- C Create a standing committee within the WAC to promote innovation and provide planning guidance, oversight and coordination of conservation programs and initiatives.
- D Include conservation requirements contained in the MOU.
- E Create a separate charge and fund for conservation programs including follow-up analysis and new and innovative conservation strategies.
- E1 Include specific conservation targets contained in the Water Supply and Transmission System EIR and provide for periodic adjustment as determined appropriate by the WAC.”

Note: Alphanumeric designations are same as contained on Framework Issues List.

Attachment D

Language to Implement Consensus Reached Recommended by JONWRM

Language contained in the 11th Amended Water Supply Agreement is already quite complete with regard to conservation. The best way to reflect the Parties decisions at the first negotiation session therefore is believed to show additions (italics) and deletions (strike-outs) relative to the 11th Amended Agreement language. Pertinent language in the MOU is also added. However, specific items with timelines called out in the MOU Regarding Water Transmission System Capacity Allocation During Temporary Impairment (MOU) are not included because most will be completed by March 1 of 2003 and it is unlikely a new agreement will be concluded by that date. One exception is the requirement pertaining to Rohnert Park metering of residential customers. Dates in the MOU go beyond March of 2003 for this item, but Rohnert Park has already let the contract for meter installation and it also now appears meters will be installed and billing commenced on all residential customers before a new agreement will be in place.

Regards the Conservation Items included on the Framework Issues List, all were addressed at the September 23 session except Item E1 concerning conservation goals (targets) contained in the Water Supply and Transmission Project EIR. Believing there is consensus on this issue, I have taken the liberty to include these as well.

The following additions/changes are therefore recommended as reflecting the consensus of the Parties on water conservation issues:

1. Reorganize and change existing Section 1.12 (existing 11th Amended Agreement) as follows reflect the consensus of the Parties:

“1.12 Water Conservation Requirements

(a) It shall be the goal of the water contractors, in addition to savings expected to occur due to the Federal Energy Policy Act, to achieve the following annual water conservation savings by year 2015.

<u>Water Contractor</u>	<u>acre-ft per year</u>
<i>Cotati</i>	<i>80</i>
<i>Forestville Water District</i>	<i>20</i>
<i>Petaluma</i>	<i>1,040</i>
<i>North Marin Water District</i>	<i>1,240</i>
<i>Marin Municipal Water District</i>	<hr/>
<i>Rohnert Park</i>	<i>1,450</i>
<i>Santa Rosa</i>	<i>2,560</i>
<i>Sonoma</i>	<i>210</i>
<i>Valley of the Moon Water District</i>	<i>230</i>
<u><i>Windsor</i></u>	<hr/>
<i>Total</i>	<hr/>

From time to time, the Water Advisory shall review and may revise these goals.

(b) The Water Contractors, and with respect to other Agency customers, the Agency, shall sign the “Memorandum of Understanding Regarding Urban Water Conservation in California” maintained by the California Urban Water Conservation Council (CUWCC) and thereby commit to implement Best Management Practices of water conservation from time to time promulgated by said Council, subject to and to no extent greater than required by the terms of said memorandum as a minimum implement or use their best efforts to secure the implementation of urban water conservation best management practices as the same may be established by the California Urban Water Council, or shall implement or use their best efforts to secure the implementation of alternative water conservation measures that secure at least the same level of water savings. Annual membership dues levied on Water Contractors by the CUWCC shall be paid by the Agency. The Water Contractors, and with respect to other Agency customers, the Agency, shall also implement or use their best efforts to secure the implementation of any water conservation requirements that may be added as terms or conditions of the Agency's appropriative water rights permits or licenses, or with which the Agency must comply under compulsion of regulation or law.

(c) Should the Water Advisory Committee determine and so notify any water contractor that its efforts to achieve compliance with the water conservation practices required by this Section 1.12 are unsatisfactory, then such contractor shall bring its water conservation program into compliance within six months after such notice, or within such additional time as may be granted by the Water Advisory committee. Should such water contractor's noncompliance as determined by the Water Advisory Committee continue for six months after such notice of noncompliance, or beyond such additional time as may be granted by the Water Advisory Committee, then the water contractor shall thereafter pay a surcharge on all water delivered by the Agency pursuant to this agreement equal to ten percent of the Operation and Maintenance Charge until the Water Advisory Committee determines that such water contractor is in compliance. The proceeds of any surcharge paid pursuant to this section shall be deposited and paid out in the same manner as the proceeds of the Operation and Maintenance Charge Water Conservation Fund.”

2. Regards water conservation issues, retain Section 2.5 as is:

“2.5 Water Conservation Measures

The Agency may undertake or fund any cost effective water conservation measure that will reduce water demands on the Transmission System and that has been approved by the Water Advisory Committee.”

3. Add line 10 to existing Section 4.1(a) to recognize/create the water conservation charge/fund:

“4.1 Separate Charges and Funds

(a) On or before April 30 preceding each fiscal year during which any of the following charges are payable, the Agency will establish the amount of the following charges for the ensuing fiscal year:

- (1) the Operation and Maintenance Charge,
- (2) the Santa Rosa Aqueduct Capital Charge,
- (3) the Forestville Aqueduct Capital Charge,
- (4) the Sonoma Aqueduct Capital Charge,
- (5) the Petaluma Aqueduct Capital Charge,
- (6) the Aqueduct Facilities Revenue Bonds Charge,
- (7) the Storage Facilities Revenue Bonds Charge,
- (8) the Common Facilities Revenue Bonds Charge.
- (9) the North Marin Revenue Bonds Charge
- (10) *the Water Conservation Fund Charge*”

4. Add following section to Part 4 of existing agreement to define the water conservation charge:

“4.xx Water Conservation Charge

The Water Conservation Charge shall be a uniform charge per acre-foot and shall be paid by all regular customers of the Agency for all water delivered from the Transmission System or delivered under the Agency’s water rights. The aggregate amount to be received by the Agency from the Water Conservation Charge for each fiscal year shall be sufficient to produce water sales revenue to pay for:

(a) Water conservation programs, projects and activities approved by the Water Advisory Committee, and

(b) Water conservation program materials, supplies, Agency staff labor, and contractor services supplied by the Agency in support of its regular customers’ water conservation programs.”

5. Add following subsection to existing Section 5.3 of agreement:

“(d) The Water Advisory Committee may, from time to time create subcommittees. One standing subcommittee shall be the Water Conservation Sub-committee. In addition to other duties that may be assigned from time to time by the Water Advisory Committee, the Water Conservation Sub-Committee shall:

(1) Periodically, as determined by the Water Advisory Committee, review water conservation goals set forth in Section 1.12 and make recommendations to the Water Advisory Committee for consideration.

(2) Promote innovation and provide planning guidance, oversight and coordination of water conservation programs and initiatives undertaken by the Water Contractors and the Agency.”

End of Attachment D

Attachment E

Topics I and VI from “Framework Issues to be Included in New Agreement Negotiation” (Framework Issues List as revised by WAC on June 3, 2002, after considering changes recommend by the public at Workshop No. 4)

“I. Over-arching Provision Regarding Planning and Consideration of Environmental Impacts

- A Provide ample opportunity for input from the public and periodically quantify the best possible water resource mix which optimizes provision of a reliable and economical supply of high quality water and related services while promoting a healthy environment. Quantification shall include consideration of all available supplies including conservation, recycling, ground water and surface water; and, take into account levels of reliability (including the reliability of Eel River diversions), watershed needs and environmental impacts. Maximizing opportunities that will result in minimizing or avoiding environmental mitigation and restoration costs shall be a high priority. The WAC shall determine how frequently this planning effort or elements of same will be undertaken.”

“VII. Agreement Governance

- S Reorganize WAC into a two-tier committee - technical and policy. The technical committee to meet monthly as needed and be comprised of an appointed staff representative from each local agency signatory to the agreement. The policy committee to meet every other month as needed including two semiannual meetings with Directors of the SCWA and to be comprised of an elected official appointed by the elected body of each agency signatory to the agreement. Voting to remain the same, i.e. weighted in proportion to average day peak month entitlement and require a clear majority of WAC members.
- T Include language in the agreement regarding provision of information on a timely basis.
- U Review adequacy of current reporting requirements and consider appropriate amendments, including provisions for conducting outside management audits.
- V Memorialize a recent practice of SCWA - namely development of a website and posting of information.
- W Consider alternative voting requirements to: (a) amend the agreement, and (b) for other WAC authorities.”

Note: Alphanumeric designations are same as contained on Framework Issues List.